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Dated: August 30, 2011

Signature: /Lilian Y. Ficht #64,514/
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Docket No.: 30203/39227
(PATENT)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:
Steve ARMSTRONG et al.

Application No.: 10/801,195

Confirmation No.: 5133

Filed: March 16, 2004

Art Unit: 2121

For: Remote Data Visualization Within an Asset Data
System for a Process Plant

Examiner: J. L. NORTON

REPLY BRIEF IN ACCORDANCE WITH 37 C.F.R. § 41.41

Mail Stop Appeal Brief – Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

INTRODUCTORY COMMENTS

This paper is submitted in response to the “Examiner’s Answer” having a mail date of June 30, 2011 in connection with the above-identified application. The Appellants respectfully submit the instant Reply Brief is in accordance with 37 C.F.R. § 41.41.

REMARKS

The Examiner’s Answer dated June 30, 2011 repeats the rejections set forth in the “Final Office Action” dated July 2, 2010 and attempts to provide further clarification thereto, as stated on page 6 of the Examiner’s Answer. Even with the clarifications, however, the Examiner’s Answer remains consistent with the Final Office Action in that at no point does the Examiner’s Answer identify that all elements are found in a combination of the cited art, and that at no point does the Examiner’s Answer identify a legally cognizant basis for combining the elements to recreate the Appellants’ invention as claimed. For ease of reference, the Appellants address each one of the issues raised in the Examiner’s Answer as it appears in section (10) entitled “Response to Argument.”

A. The Rejection Of Claims 1, 2, 4, 5, 7-10, 15, 17, 19, 22-25, 27, 28, 30-34, 36, 42 and 43 Under 35 U.S.C. § 103(a) As Unpatentable Over Nixon et al. in view of Saleh et al. Is Not Proper

1. A *Prima Facie* Case of Obviousness of Claim 1 Has Not Been Made.

Subsection A of the Examiner's Answer:

On page 37 of subsection A, the Examiner alleges that the Appellant is arguing against the references of Nixon and Saleh individually, and one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. Appellants respectfully disagree. Rather than attacking the references individually to show nonobviousness, Appellants are instead showing nonobviousness by demonstrating that the Examiner has not articulated “a finding *that the prior art included each element claimed, although not necessarily in a single prior art reference*” (emphasis added), as required by MPEP 2143, subsection A(1).

In particular, the Examiner first admits that cited prior art Nixon does not include the elements recited by claim 1:

wherein two or more of the plurality of data source applications each presents the entity data in different visual user interface display formats... [and]

wherein the predetermined viewing format is a common visual user interface display format for presenting entity data associated with each of the plurality of sections specifying the different data to be displayed in a same visual interface format...

(See Examiner's Answer, page 8: “Nixon... does not expressly teach wherein two or more of the plurality of data source applications each presents the entity data in different visual user interface display formats... and wherein the predetermined viewing format is a common visual user interface display format for presenting entity data associated with each of the plurality of sections...”). Next, the Examiner attempts to articulate, on pages 8-9, the passages of Saleh that allegedly include these elements that are missing from Nixon. In spite of the clarifications added in the Examiner's Answer on pages 8-9, Appellants still disagree with the Examiner's assertion that the passages of Saleh cited in the Final Office Action and again on pages 8-9 of the Examiner's Answer include the missing elements of claim 1. In explaining the rationale for this disagreement, rather than attacking Saleh and Nixon

individually, Appellants are merely demonstrating how Saleh, like Nixon, also does not include the missing claimed elements, and thus, how the Examiner has not articulated a finding that the prior art included each element claimed, although not necessarily in a single prior art reference.

Specifically, with regard to the elements recited by independent claim 1 that are alleged by the Examiner to be disclosed by Saleh and not by Nixon:

wherein two or more of the plurality of data source applications each presents the entity data in different visual user interface display formats... [and]

wherein the predetermined viewing format is a common visual user interface display format for presenting entity data associated with each of the plurality of sections specifying the different data to be displayed in a same visual interface format[,]

the Examiner construes the “two or more of the plurality of data source applications” to be the applications 22-24 of Saleh, FIG. 1 (Examiner’s Answer, page 8). The Examiner also construes “entity data associated with each of the plurality of sections” to be the elements 28, 32, 34, 36, 38, 40, 42 and 44 of Saleh, FIG. 2, and, following similar reasoning, further construes the “different data” associated with each of the plurality of sections to be the control features described in Saleh, 3:6-12 (Examiner’s Answer, page 9).

The alleged “entity data” and the alleged “different data” (respectively included in windows 28, 32, 34, 36, 38, 40, 42 and 44 of Saleh, FIG. 2 and in Saleh, 3:6-12), though, are not disclosed by Saleh as being associated “with each of the plurality of sections.” Instead, Saleh discloses that the data of windows 28, 32, 34, 36, 38, 40, 42 and 44 of FIG. 2 and the control features of Saleh, 3:6-12 are associated with Saleh’s *applications 22-24*: “Included within the system 10 is a proxy server 18 that functions to provide a common interface between the users 12, 14 and the applications 22, 24” (Saleh, 2:26-28) and “the proxy server 18 may function based upon the use of a predetermined number of windows that may be written onto the screens of the users 12, 14... *Data from the applications 22, 24 may, when activated, be mapped into a data window 28. Control features may be mapped into control windows 32, 34, 36, 38, 40, 44*” (Saleh, 2:45-47, 49-52, emphasis added).

Indeed, to this point, Saleh, FIG. 5 provides a specific example where the windows 208, 206, 210, 212 and 214 (corresponding to the generally-described windows 28, 32, 36, 38, 40 42 and 44 of FIG. 2) are associated with a *time entry application 22*: “FIG. 5 depicts

an example an example wherein it is assumed that a user 12, 14 wishes to do time entry using a time entry application (e.g., 22)” (Saleh, 3:63-65). Further to this point, Saleh, FIG. 6 illustrates a specific example where the windows 308, 306, 310, 312 and 314 (also corresponding to the generally-described windows 28, 32, 36, 38, 40 42 and 44 of FIG. 2) are associated with a *customer order application*: “FIG. 6 depicts a screen 300 that may be created by the proxy server 18 for entry of customer order information.” (Saleh, 4:22-23).

As such, Saleh clearly and consistently describes the windows 28, 32, 34, 36, 38, 40, 42 and 44 of Saleh, FIG. 2 and the control features of Saleh, 3:6-12 as being associated with the applications 22-24. As previously discussed, Saleh’s applications 22-24 were construed by the Examiner on page 8 to be “two or more of the plurality of data source applications.” Thus, it follows that the passages of Saleh cited by the Examiner with regard to elements missing from Nixon (i.e., the elements 28, 32, 34, 36, 38, 40, 42 and 44 of Saleh, FIG. 2 and Saleh, 3:6-12) disclose a predetermined viewing format for presenting data associated with two or more of the plurality of *applications*, and not data “associated with a plurality of *sections*” (emphasis added), as required by independent claim 1.

The MPEP 2143.03 is clear that “[a]ll words in a claim must be considered in judging the patentability of that claim against the prior art.” In other words, because independent claim 1 recites two distinct elements: 1) “two or more of the plurality of data source applications [that] each presents the entity data,” and 2) “entity data associated with each of plurality of sections,” and because the Examiner admits that Nixon does not disclose these elements, the Examiner must provide support that Saleh discloses both of these two distinct elements. The Examiner fails to do so, as the Examiner only cites to the *single* reference, i.e., Saleh’s applications 22-24, as describing both the “two or more of the plurality of data source applications [that] each presents the entity data” and the “each of the plurality of sections” with which the entity data is associated. To articulate an accurate finding that Saleh includes two separate and distinct elements, the Examiner must cite to two separate and distinct elements of Saleh. The Examiner does not do so, as the Examiner improperly construes Saleh’s applications 22-24 to be both the “two or more of the plurality of data source applications” and the “plurality of sections.”

Accordingly, as the Examiner admits Nixon does not disclose certain elements of independent claim 1, and as the Examiner improperly construes a single element of Saleh to be two separate and distinct elements that are not disclosed by Nixon, the Examiner has not

demonstrated “a finding that the prior art included each element claimed, although not necessarily in a single prior art reference” as required by the MPEP 2143, subsection A(1). Thus, Appellants respectfully submit that, for at least this reason and for reasons previously discussed in the Appeal Brief, the Examiner has not established a *prima facie* case of obviousness for independent claim 1.

Subsection B of the Examiner’s Answer:

In response to subsection B with regard to a teaching, suggestion or motivation to combine Nixon and Saleh, Appellants respectfully submit that the Examiner still does not provide a rationale as to why one of ordinary skill in the art would modify the references to produce the claimed subject matter. The rationale provided by the Examiner merely repeats the Final Office Action’s citation to Saleh, 2:53-57: “In this case, Saleh teaches to providing a common visual in the user interface format to provide users with less difficulty in operating, as well as, need for training operation in a range of different *applications*” (Examiner’s Answer, page 44, emphasis added).

However, as previously discussed, Saleh’s applications 22-24 were construed by the Examiner to be the “two or more of the plurality of data source applications” recited by independent claim 1. As such, by citing to Saleh, 2:53-57 as support for a rationale to combine Nixon and Saleh, the Examiner provides, at best, an alleged rationale for a common visual across “two or more of the plurality data source applications,” but does not provide any rationale whatsoever for a common visual across a “plurality of *sections*” (emphasis added), where the “plurality of sections” is a separate and distinct element from the “two or more of the plurality of data source applications.” Thus, the Examiner fails to provide a rationale as to why one of ordinary skill in the art would modify the references to produce the claimed subject matter, where the claimed subject matter includes two distinct elements: 1) “two or more of the plurality of data source *applications* [that] each presents the entity data” (emphasis added), and 2) “entity data associated with each of plurality of *sections*” (emphasis added). Appellants respectfully submit that, for at least this additional reason and for reasons previously discussed in the Appeal Brief, the Examiner has not established a *prima facie* case of obviousness for independent claim 1.

2. A *Prima Facie* Case Of Obviousness Of Claims 2, 4, 5, 7-10, 15, 17, 19, 22 and 23 Has Not Been Made.

Claims 2, 4, 5, 7-10, 15, 17, 19, 22 and 23 each depend from independent claim 1, and therefore each of claims 2, 4, 5, 7-10, 15, 17, 19, 22 and 23 includes all elements recited by independent claim 1. It is respectfully submitted that claims 2, 4, 5, 7-10, 15, 17, 19, 22 and 23 are not rendered unpatentable over Nixon in view of Saleh for at least the same reasons set forth above and in the Appeal Brief for independent claim 1.

3. A *Prima Facie* Case Of Obviousness Of Claim 24 Has Not Been Made.

Independent claim 24 recites elements similar to independent claim 1, as discussed in the Appeal Brief, and it is respectfully submitted that claim 24 is not rendered unpatentable over Nixon in view of Saleh for at least the same reasons set forth above and in the Appeal Brief for independent claim 1.

4. A *Prima Facie* Case Of Obviousness Of Claims 25, 27, 28, 30-34, 36, 42 and 43 Has Not Been Made.

Claims 25, 27, 28, 30-34, 36, 42 and 43 each depend from independent claim 24, and therefore each of claims 25, 27, 28, 30-34, 36, 42 and 43 includes all elements recited by independent claim 24. It is respectfully submitted that claims 25, 27, 28, 30-34, 36, 42 and 43 are not rendered unpatentable over Nixon in view of Saleh for at least the same reasons set forth above and in the Appeal Brief for independent claim 24.

B. The Rejection Of Claims 19, 22 and 36 Under 35 U.S.C. § 103(a) As Obvious Over Nixon et al. and Saleh et al. in further view of Latzel Is Not Proper

1. A *Prima Facie* Case of Obviousness of Claims 19 and 22 Has Not Been Made.

Claims 19 and 22 each depend from independent claim 1, and therefore each of claims 19 and 22 includes all elements recited by independent claim 1. It is respectfully submitted that claims 19 and 22 are not rendered unpatentable over Nixon in view of Saleh and in further view of Latzel for at least the same reasons set forth above and in the Appeal Brief for independent claim 1.

2. A *Prima Facie* Case of Obviousness of Claim 26 Has Not Been Made.

Claim 26 depends from independent claim 24, and therefore includes all elements recited by independent claim 24. It is respectfully submitted that 26 is not rendered unpatentable over Nixon in view of Saleh and in further view of Latzel for at least the same reasons set forth above and in the Appeal Brief for independent claim 24.

C. The Rejection Of Claims 3, 16, 18, 29, 35 and 41 Under 35 U.S.C. § 103(a) As Obvious Over Nixon et al. and Saleh et al. in further view of Spriggs Is Not Proper

1. A *Prima Facie* Case of Obviousness of Claims 3, 16 and 18 Has Not Been Made.

Claims 3, 16 and 18 each depend from independent claim 1, and therefore each of claims 3, 16 and 18 includes all elements recited by independent claim 1. It is respectfully submitted that claims 3, 16 and 18 are not rendered unpatentable over Nixon in view of Saleh and in further view of Spriggs for at least the same reasons set forth above and in the Appeal Brief for independent claim 1.

2. A *Prima Facie* Case of Obviousness of Claims 29, 35 and 41 Has Not Been Made.

Claims 29, 35 and 41 each depend from independent claim 24, and therefore each of claims 29, 35 and 41 includes all elements recited by independent claim 24. It is respectfully submitted that claims 29, 35 and 41 are not rendered unpatentable over Nixon in view of Saleh and in further view of Spriggs for at least the same reasons set forth above and in the Appeal Brief for independent claim 24.

D. The Rejection Of Claims 6, 11-14, 20, 21, 37-40 and 44 Under 35 U.S.C. § 103(a) As Obvious Over Nixon et al. and Saleh et al. in further view of Kall Is Not Proper

1. A *Prima Facie* Case of Obviousness of Claims 6, 11-14, 20 and 21 Has Not Been Made.

Claims 6, 11-14, 20 and 21 each depend from independent claim 1, and therefore each of claims 6, 11-14, 20 and 21 includes all elements recited by independent claim 1. It is respectfully submitted that claims 6, 11-14, 20 and 21 are not rendered unpatentable over

Nixon in view of Saleh and in further view of Kall for at least the same reasons set forth above and in the Appeal Brief for independent claim 1.

2. A *Prima Facie* Case of Obviousness of Claims 37-40 and 44 Has Not Been Made.

Claims 37-40 and 44 each depend from independent claim 24, and therefore each of claims 37-40 and 44 includes all elements recited by independent claim 24. It is respectfully submitted that claims 37-40 and 44 are not rendered unpatentable over Nixon in view of Saleh and in further view of Kall for at least the same reasons set forth above and in the Appeal Brief for independent claim 24.

CONCLUSION

For the reasons provided above, it is respectfully submitted that a *prima facie* case of obviousness of the claims on appeal has not been made. The Appellants therefore respectfully request that the Board reverse the final rejection of claims 1, 2, 4, 5, 7-10, 15, 17, 19, 22-25, 27, 28, 30-34, 36, 42 and 43 as unpatentable over Nixon in view of Saleh; the final rejection of claims 19, 22 and 26 as unpatentable over Nixon and Saleh, or, in the alternative, as unpatentable over Nixon and Saleh and in further view of Latzel; the final rejection of claims 3, 16, 18, 29, 35, and 41 as unpatentable over Nixon and Saleh in further view of Spriggs; and the rejection of claims 6, 11-14, 20, 21, 37-40 and 44 as unpatentable over Nixon and Saleh in further view of Kall.

The Appellants believe no fee is due. However, the Commissioner is hereby authorized to charge any deficiency in the amount enclosed or any additional fees which may be required under 37 CFR 1.16 or 1.17 to Deposit Account No. 13-2855.

Dated: August 30, 2011

Respectfully submitted,

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